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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Petition for Rulemaking )  
Regarding the Administration )  
and Disposition of Competitive )  
Bidding Installment Payment )  
Obligations )

PETITION FOR RULEMAKING

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### SUMMARY

Cook Inlet Region, Inc. ("CIRI") urges the Commission to initiate a rulemaking to establish the requirements of and procedures for the administration and disposition of competitive bidding installment payment obligations. In the course of this rulemaking, CIRI specifically requests that the Commission establish uniform rules for the treatment of licensees that are delinquent or in default on their installment payment obligations or who otherwise seek modification of the terms of those obligations, for addressing licensees in bankruptcy, and for the content of installment payment promissory notes and security agreements.

Recent events highlight the need for a rulemaking procedure to set forth the regulations that will govern the payment process in the event that a licensee is unable to meet its obligations. Although the Commission intended that its installment payment rules would be strictly enforced as a condition of licenses awarded by competitive bidding, certain entities placed irresponsible bids in recent auctions and now seek to transfer the burden of their choices to the Commission. CIRI believes that a developed record on this issue will reveal the negative impact of addressing these situations on a case-by-case basis in the absence of applicable regulations.

Finally, the Commission should reinstate all payment obligations until these issues have been subject to public notice and comment.

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**PETITION FOR RULEMAKING**

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.401, petitions the Commission to institute a comprehensive rulemaking regarding the administration and disposition of competitive bidding installment payment obligations. In particular, CIRI urges the Commission to establish uniform rules for the specific treatment of licensees that are delinquent or in default on their installment payment obligations or who otherwise seek modification of the terms of those obligations, for addressing licensees in bankruptcy, and for the content of installment payment promissory notes and security agreements. These rules should be applicable to installment payments for all services licensed by competitive bidding, including the PCS C and F block licenses.

**I. INTRODUCTION**

CIRI is an Alaska Native corporation owned by approximately 7,000 Athabascan, Eskimo, Aleut, Haida, Tlingit, and other Native American shareholders. A majority of CIRI's shareholders are women. One-third of CIRI's shareholders have incomes below the

poverty level. CIRI was created and organized pursuant to congressional enactment as part of the United States' political settlement of Alaska Native claims for the return of their aboriginal lands. See Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-29e ("ANCSA").

Through a limited partnership, Cook Inlet Western Wireless PV/SS PCS, L.P. ("Cook Inlet PCS"), CIRI bid for and won broadband personal communications services ("PCS") licenses in the Commission's broadband PCS C block auction, C block reauction, and F block auction. Cook Inlet PCS is eligible to pay for each of these licenses through the Commission's broadband PCS C and F block installment payment programs. Cook Inlet PCS has made each of its installment payments due to date in a timely fashion, and Cook Inlet PCS has not been delinquent or in default on any competitive bidding payment obligations. Cook Inlet PCS will be launching the first C block major market PCS system in mid-1997.

In its competitive bidding proceedings, the Commission established certain rules for the administration of installment payment obligations. Principal among these is that "[a] license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment payment plan."<sup>1</sup> In that regard, the Commission recognized that strict

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1. 47 C.F.R. § 1.2110(e)(4). See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2391 (1994) ("Second

enforcement of its payment rules is central to the sound administration of its spectrum auction program.

As the Commission wrote in a related context in its competitive bidding Second Report and Order:

[I]t is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not be qualified to hold licenses or default on a balance due. We therefore are adopting penalties to be assessed in the event of default or disqualification. These penalties will provide strong incentives for potential bidders to make certain of their qualifications and financial capabilities before the auction so as to avoid delays in the deployment of new services to the public that would result from litigation, disqualification and re-auction.<sup>2</sup>

Specifically with regard to installment payments, the Commission acknowledged that auction activity and installment payment obligations were closely linked:

Reducing or eliminating interest payments could result in very high bids, which could reduce competition and promote defaults among entrepreneurs. Such an approach could also encourage speculation instead of legitimate applicants who can attract capital.<sup>3</sup>

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Report and Order") ("An eligible designated entity that elects installment payments will have its license conditioned upon the full and timely performance of its payment obligations under the installment plan granted to the licensee"); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5593 (1994) ("Fifth Report and Order") ("Timely payment of all installment payments will be a condition of the license grant").

2. Second Report and Order, 9 FCC Rcd at 2382 (footnote omitted) (emphasis added).

3. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 460 (1994) ("Fifth MO&O").

Thus, the Commission focused on assisting responsible smaller businesses to attract the capital necessary to participate in the provision of spectrum-based services.

As part of that effort, however, the Commission provided for the availability of narrow grace period relief for a licensee that is delinquent on its installment payment obligations.<sup>4</sup> In judging a grace period request, the Commission established that it may consider:

among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy.<sup>5</sup>

Thereafter, however, the Commission was clear: "Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to part 1, subpart O."<sup>6</sup>

Notwithstanding these provisions, the Commission recently has taken extraordinary measures to deal with licensees that cannot satisfy their installment payment obligations. On March 25, 1997, the Wireless Telecommunications Bureau released a

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4. See 47 C.F.R. § 1.2110(e)(4)(ii).

5. Id.

6. Id., § 1.2110(e)(4)(iii). See also Second Report and Order, 9 FCC Rcd at 2391.

Public Notice entitled Reminder to Licenses [sic] with Installment Payment Plans: Availability of Grace Periods,<sup>7</sup> the principal purpose of which was to assist licensees in employing the grace period exception to the installment payment rules. Six days later, the Wireless Bureau suspended the payment deadline for all installment payment obligations,<sup>8</sup> including those of licensees that had made all payments theretofore and had never asked for Commission relief. The Commission has not yet reinstated the installment payment obligations of any broadband PCS licensees.

By ex parte letter dated May 1, 1997, MCI Telecommunications Corporation urged that the Commission, inter alia, provide wholesale payment relief for C block licenses for a period of five years. If adopted, this plan would result in the non-payment of billions of dollars in obligations to the government. Moreover, the policy would be established on a private "waiver" basis without the opportunity for public comment and the concomitant opportunity to develop reasonable standards.<sup>9</sup> The

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7. DA 97-580. See also Public Notice: Wireless Telecommunications Bureau Staff Clarifies "Grace Period" Rule for IVDS "Auction" Licensees Paying by Installment Payments, 10 FCC Rcd 10724 (Wireless Tel. Bur. 1995).

8. Installment Payments for PCS Licenses, Order, DA 97-649 (rel. Mar. 31, 1997).

9. See Ex Parte letter from MCI to William F. Caton, May 1, 1997 at 3.

proposal amounts to a give-away of several billion dollars in government obligations.<sup>10</sup>

This example clearly demonstrates the need for a rulemaking to address the important policy questions raised by this issue.<sup>11</sup> Indeed, in this case, where the integrity of the auction program itself and \$10 billion in government debt will be substantially affected by the Commission's policies, a public proceeding is called for, rather than policymaking on a piecemeal basis. Therefore, this rulemaking should be initiated so that these important policy decisions may be made in accordance with the principles of the Administrative Procedure Act.

**II. THE COMMISSION SHOULD ESTABLISH WITH PARTICULARITY THE REQUIREMENTS OF AND PROCEDURES FOR THE ADMINISTRATION AND DISPOSITION OF INSTALLMENT PAYMENT OBLIGATIONS**

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Against this background, CIRI urges the Commission to establish the requirements of and procedures for the administration and disposition of competitive bidding installment payment obligations. Although the Commission intended that its installment payment rules would be strictly enforced as a condition of licenses awarded by competitive bidding, certain entities placed irresponsible bids in recent auctions and now seek to transfer the burden of their choices to the Commission. Sanctioning this conduct will only "encourage speculation instead

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10. See Ex Parte letter from Cook Inlet Region, Inc. to Reed E. Hundt, May 7, 1997 (with attachment).

11. See, e.g., JEM Broadcasting Co., Inc. v. FCC, 22 F.3d 320, 327 (D.C. Cir. 1994) (examining whether "substantive effects are sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA").

of legitimate applicants who can attract capital."<sup>12</sup> Instead, the Commission now should establish with particularity when and under what limited circumstances licensees may expect installment payment relief.

Recent events highlight the need for a rulemaking procedure to set forth the regulations that will govern the payment process in the event that a licensee is unable to meet its obligations. As licensees or their surrogates request individual waivers from certain payment obligations, there is increasing uncertainty as to the manner in which the Commission will handle situations where licensees are in default or distress. Yet, many of the potential downfalls related to the piecemeal establishment of such policy and precedent will not be vetted through a public rulemaking. If the Commission adopted the MCI proposal, for example, it could do so without public comment and debate. At bottom, CIRI opposes the concept of such large scale bail-outs and believes that a developed record on this issue will reveal the negative impact of such plans that are considered on a case-by-case basis in the absence of applicable regulations.

For example, individualized waivers and grace periods are fundamentally unfair to those designated entities who have honored their obligations to the government. Such waivers will also result in the loss of revenues by the government under existing debt obligations. Moreover, any special and favorable exceptions that are made for individual licensees may lead to

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12. Fifth MO&O, 10 FCC Rcd at 460.

litigation by classes of aggrieved parties, resulting in the reversal of decisions that have been reached without the benefit of public comment. Policy decisions under these circumstances only compound uncertainties, eroding industry confidence in the overall auction program and inhibiting the rapid roll-out of services to the public, contrary to Congressional policy.<sup>13</sup>

A rulemaking also will provide an opportunity for the Commission to resolve the "tension created by the FCC's present dual role as regulator of and creditor to the wireless industry."<sup>14</sup> A public proceeding will result in rules to govern payment issues that the Commission is now being asked to resolve on a case-by-case basis. In this regard, a fully-developed public record will lead to a regulatory regime based upon public disclosure and accountability, and yield guidelines that ensure fulfillment of the Commission's auction goals, even when licensees are unable to meet their payment obligations.<sup>15</sup>

The record developed in the requested rulemaking is likely to support the prompt recovery of licenses from defaulters under the Commission's existing rights, as well as the prompt recovery

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13. See 47 U.S.C. § 309(j)(4)(B).

14. Statement of Reed E. Hundt, Chairman, Federal Communications Commission, on the FCC's Fiscal Year 1998 Budget Estimates, Before the Subcommittee on Commerce, Justice, State, and Judiciary, Committee on Appropriations, U.S. House of Representatives at 7 (March 13, 1997). Chairman Hundt added that the Commission's role as creditor "may also conflict with [its] statutory duty to efficiently manage the spectrum." Id.

15. For example, strict policies under the rules will deter future speculative excesses by licensees eligible for the auction installment loan program.

of licenses from Chapter XI proceedings, especially when the debtor has no assets and the Commission is a secured creditor with over 95% of the debt. Such a finding will support in turn the prompt re-auction of defaulted licenses to qualified designated entities who are able to attract capital, meet credit-worthiness standards, and satisfy the Commission's build-out obligations. CIRI believes that the record will show that the strict enforcement of competitive bidding installment payment obligations will help to foster competitive services more quickly and to maximize government revenues generated by completed auctions. With these likely benefits in mind, the Commission should initiate the requested rulemaking to establish rules addressing each of these issues.

In the course of such a rulemaking, the Commission also should seek comment regarding the treatment of defaults, including bankrupt licensees and the automatic acceleration of debts due to government involvement in such proceedings. Also, the Commission should consider setting uniform standards and procedures for waiver and grace period requests, which would include the treatment of delinquencies, the sale of installment debt to private parties, and standards for changing interest period due dates. The rulemaking should include the development of standards for imposing "suspension of payment notices," for removing such suspensions, and for creating contractual modifications, such as modifying quarterly payment schedules to annual payment schedules. Finally, the Commission should

investigate the apparent need for increased documentation of loans and security interests so that Commission standards are commensurate with common commercial standards.

**III. THE COMMISSION SHOULD IMMEDIATELY RESTORE ALL PAYMENT OBLIGATIONS UNTIL THESE ISSUES HAVE BEEN CONSIDERED IN A RULEMAKING**

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On March 31, 1997, the Wireless Telecommunications Bureau ordered the suspension of installment payments indefinitely.<sup>16</sup> This action significantly altered the obligations to the government for licenses acquired by auction are to be made. In addition, this policy — adopted without the benefit of public comment — is presently costing the government over \$1.5 million every day. Clearly, this policy shift substantially changed the status quo under the Commission's existing rules.<sup>17</sup> It also has been a matter opposed by other C block licensees.<sup>18</sup> Therefore, the Commission should restore these payment obligations until the question of suspension of debt payments has been subject to public notice and comment in the course of the rulemaking requested by CIRI.

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16. Installment Payments for PCS Licenses, Order, DA 97-649 (rel. Mar. 31, 1997).

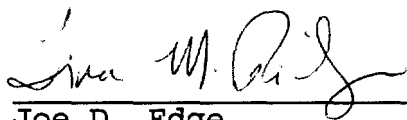
17. See 47 C.F.R. §§ 1.2110(e), 24.711(b) & (c), 24.717(b) & (c).

18. See, e.g., Letter from Mark F. Dever (on behalf of CIWWLP) to Daniel B. Phythyon, dated April 11, 1997; Letter from Airgate Wireless to Kathleen O'Brien Ham, dated April 8, 1997.

#### IV. CONCLUSION

For these reasons, CIRI urges the Commission to institute a rulemaking regarding the administration and disposition of competitive bidding installment payment obligations. The Commission should reinstate all payment obligations until such rules are implemented.

Respectfully submitted,

  
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May 7, 1997